



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

OCT 28 2014

Carol Bruce, Esq.  
K&L Gates LLP  
1601 K Street, N.W.  
Washington, D.C. 20006

RE: MUR 6889  
Michael Delk

Dear Ms. Bruce:

On August 21, 2013, the Federal Election Commission ("Commission") notified your client of a *sua sponte* submission indicating potential violations of certain provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Upon further review of the Submission, and information supplied by your client, the Commission, on October 21, 2014, voted to dismiss the allegations as they pertain to your client. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Please be advised that treasurers are responsible for the accuracy of the information contained in committee disclosure reports, as well as the timely complete filing of those reports. 11 C.F.R. § 104.14(d). Treasurers must also sign each disclosure report. 52 U.S.C. § 30104(a) (formerly 2 U.S.C. § 434(a); 11 C.F.R. § 104.1(a), 101.14(a). The Commission reminds your client of the duties and responsibilities of a treasurer under the Act. Your client should take steps to ensure that this activity does not occur in the future.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) (formerly 2 U.S.C. § 437g(a)(12)(A)) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

1. **FACTUAL AND LEGAL ANALYSIS**

2 **MUR 6889**

3  
4 **RESPONDENT:** Michael Delk

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6 **I. INTRODUCTION**

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8 This matter originated with the *sua sponte* submission made to the Federal Election  
9 Commission ("the Commission") by the National Air Transportation Association ("NATA") and  
10 the National Air Transportation Association Political Action Committee ("NATA PAC") and  
11 information ascertained by the Federal Election Commission ("Commission") in the normal  
12 course of carrying out its supervisory responsibilities.<sup>1</sup>

13 **II. FACTUAL SUMMARY**

14 NATA is a national incorporated membership organization (trade association)  
15 representing aviation business service providers.<sup>2</sup> The available information indicates that  
16 NATA is governed by a Board of Directors and its day-to-day operations are handled by its  
17 president, officers, and staff. It further indicates that 1) James Coyne was NATA's  
18 President/CEO from 1998 to 2012; 2) Alan Darrow was NATA's Director of Finance and  
19 Administration and later its Vice President of Administration beginning in 1995 until his  
20 retirement in 2009; and 3) Eric Byer served at NATA as its Government Affairs Specialist from  
21 1999 to 2003, Director of Government and Industry Affairs from 2003 to 2004, and Vice-  
22 President of Government & Industry Affairs from 2004 to August 2012.

<sup>1</sup> NATA and NATA PAC filed a *sua sponte* submission with the Commission. See NATA Response, dated August 14, 2013. The available information indicates that Delk cooperated with NATA PAC's efforts to investigate the potential violation. *Id.* at 13-14. Furthermore, Delk cooperated with the Commission's review of this matter. Delk Resp., dated Sept. 10, 2013; Delk Amended Resp., dated December 2, 2013.

<sup>2</sup> See generally <http://www.nata.aero/About-NATA.aspx> (last visited Apr. 21, 2014).

1 NATA established the NATA PAC on September 28, 1998.<sup>3</sup> Michael Delk was the  
2 named PAC treasurer from 1998 until his resignation in July 2013.<sup>4</sup> Delk operates a NATA  
3 member company and resides in Salem, Oregon.<sup>5</sup> Delk states that he did not have any  
4 professional experience as a treasurer.<sup>6</sup>

5 The available information indicates that Delk was erroneously told by NATA staff that  
6 "the [Treasurer] position was merely an honorary title and he would simply serve as a 'name' to  
7 be placed on the PAC's initial registration form."<sup>7</sup> Furthermore, the available information  
8 indicates that Delk, upon agreeing to act as NATA's named treasurer, was assured that all PAC  
9 disclosure reporting related matters would be handled by an Assistant Treasurer located at  
10 NATA headquarters.<sup>8</sup> Specifically, Delk asserts that when recruited by NATA staff to serve as  
11 Treasurer in 1998, he was informed by NATA staff that a NATA PAC employee would be  
12 designated as the assistant treasurer, serve as the Custodian of Record, and, in that capacity,  
13 would be responsible for maintaining NATA PAC's records and filing its necessary disclosure  
14 reports with the Commission.<sup>9</sup> Delk states that NATA staff assured him that the treasurer's  
15 duties would be handled by an assistant treasurer who would also be a staff member of NATA

<sup>3</sup> See NATA PAC, Statement of Organization (Sept. 28, 1998).

<sup>4</sup> Delk Amended Resp. at 2, 3, 5.

<sup>5</sup> *Id.* at 1, 2.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 1; NATA Submission at 13.

<sup>8</sup> Delk Amended Resp. at 3, 5-6; NATA Submission at 13.

<sup>9</sup> Delk Amended Resp. at 2. Although Delk claims that Byer recruited him for the position of treasurer in 1998, the available information indicates that Byer did not begin his employment with NATA until 1999. It is possible that Delk is mistaken regarding the NATA staff member who recruited him to be PAC Treasurer but clear as to his lack of participation in any substantive form as treasurer.

1 working in Virginia, where NATA and NATA PAC operations were based.<sup>10</sup> Delk further  
2 claims that he did not know that the NATA PAC reports bore his signature and notes that he also  
3 did not authorize anyone to sign or file the reports electronically on his behalf.<sup>11</sup>

4 According to the NATA's *sua sponte* submission and Delk's response, Delk never  
5 reviewed, examined, or signed any of the electronically filed disclosure reports that NATA PAC  
6 submitted to the Commission, although each report bears his signature.<sup>12</sup> Therefore, NATA  
7 PAC's "reports were not properly verified under Commission rules because they featured the  
8 signature of an individuals who did not examine them and certify their accuracy" in violation of  
9 52 U.S.C. § 30104(a)(1) (formerly 2 U.S.C. § 434(a)(1)) and 11 C.F.R. § 104.18(g).

### 10 III. LEGAL ANALYSIS

11 Treasurers are responsible for the accuracy of the information contained in committee  
12 disclosure reports, as well as the timely complete filing of those reports.<sup>13</sup> Treasurers must also  
13 sign each disclosure report.<sup>14</sup> This gives rise to record-keeping obligations. Among them, a  
14 treasurer must keep an account of the identification of each person whose contributions

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<sup>10</sup> Darrow was designated as the PAC Assistant Treasurer from 2001 to 2002. *See* NATA PAC, Amended Statement of Organization (May 22, 2001). Burnside was PAC Assistant Treasurer from 2002 to 2003. *See id.*, Amended Statement of Organization (July 19, 2002). Byer was the PAC Assistant Treasurer from October 2003 to October 2012. *See id.*, Amended Statement of Organization (Oct. 16, 2003). The available information indicates that NATA PAC also retained an outside consultant who worked with Byer to file NATA PAC disclosure reports with the Commission.

<sup>11</sup> Delk Amended Resp. at 3. The available information indicates that Delk's assertion that he never authorized any reports is confirmed by the PAC consultant who prepared and filed NATA PAC's disclosure reports. Further, it indicates that the PAC consultant worked directly with Byer on PAC disclosure matters until he was promoted (in 2004) and turned over the day-to-day management of those matters to Kristen Moore. However, as to the use of Delk's signature, the available information indicates that it was implicit that others could sign on Delk's behalf and that it was something that was discussed. After receiving approval, the available information indicates that the PAC consultant filed the disclosure reports which featured Delk's signature.

<sup>12</sup> The available information indicates that NATA began filing its PAC reports electronically in 2001.

<sup>13</sup> 11 C.F.R. § 104.14(d).

<sup>14</sup> 52 U.S.C. § 30104(a)(1) (formerly 2 U.S.C. § 434(a)(1)); 11 C.F.R. §§ 104.1(a), 104.14(a).

1 aggregate in excess of \$200 within a calendar year, together with the date and amount of each  
2 contribution.<sup>15</sup> "Due to their 'pivotal role,' treasurers may be held personally liable for failing to  
3 fulfill their responsibilities under the Act and the Commission's regulations."<sup>16</sup> As a matter of  
4 policy the Commission has determined that "[i]n practice, however, the Commission intends to  
5 consider a treasurer the subject of an enforcement proceeding in his or her personal capacity only  
6 when available information indicates that the treasurer had knowledge that his or her conduct  
7 violated a duty imposed by law, or "where the treasurer recklessly failed to fulfill his or her  
8 duties. . . , or intentionally deprived himself or herself of facts giving rise to the violation."<sup>17</sup>

9 Delk was the Treasurer of NATA PAC from 1998 to 2013. He asserts that NATA staff  
10 informed him before he accepted the position that a NATA PAC employee would be designated  
11 as the assistant treasurer and in that capacity would be responsible for maintaining NATA PAC's  
12 records and filing its necessary disclosure reports with the Commission. Delk recalls being told  
13 the PAC needed "to have a named treasurer for the records."<sup>18</sup> He believed he was Treasurer in  
14 name only and was not made aware of the treasurer's responsibilities under the Act.<sup>19</sup> Delk  
15 contends moreover, that NATA PAC promised reporting responsibilities and other PAC business  
16 would be fully delegated to his assistant treasurers, whom he characterized as the *de facto*

<sup>15</sup> 52 U.S.C. § 30109(b)(3)(a) (formerly 2 U.S.C. § 434(b)(3)(a)).

<sup>16</sup> Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. at 3, 5 (Jan. 3, 2005) (quoting *FEC v. Toledano*, 317 F.3d 939, 947 (9th Cir. 2003)).

<sup>17</sup> *Id.*

<sup>18</sup> Delk Resp. at 1.

<sup>19</sup> It does not appear Delk knew how reports were being submitted to the Commission during his lengthy tenure as Treasurer or that NATA PAC used his signature on reports. Delk Amended Resp. at 2.

1 treasurers of NATA PAC.<sup>20</sup> Delk further claimed that he did not know that the NATA PAC  
2 reports bore his signature.<sup>21</sup>

3 An arrangement for a lack of involvement does necessarily relieve a Treasurer from his  
4 responsibility under the Act and Commission regulations to familiarize himself with the relevant  
5 records, conduct appropriate inquiries, and certify the accuracy of NATA PAC's disclosure  
6 reports with his signature.<sup>22</sup> Nonetheless, Delk, a member of the organization, a non-  
7 professional political committee staffer, and an inexperienced PAC participant, relied on the  
8 erroneous guidance of politically experienced, professional NATA staff, who assured him that  
9 the position was merely an honorary title and that all formal treasurer responsibilities would be  
10 handled by paid NATA staffers. Furthermore, NATA and NATA PAC presented this apparent  
11 violation to the Commission as a *sua sponte* submission and both NATA and Delk fully  
12 cooperated with the Commission by providing substantial additional information. Therefore,  
13 based on the unique circumstances in the matter, the Commission dismisses the allegations that  
14 Delk, in his personal capacity, violated 52 U.S.C. § 30104(a)(1) (formerly 2 U.S.C. § 434(a)(1)),  
15 and reminds Delk about the duties and obligations of a committee treasurer.

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<sup>20</sup> Delk Amended Resp. at 1-3, 5-6.

<sup>21</sup> *Id.* at 3. The available information indicates that the PAC consultant electronically filed the reports after receiving authorization from Byer or whichever staff person she was working with at the time. Further, the available information indicates that the PAC consultant does not recall Delk specifically authorizing the filing of any disclosure reports, but believed that his authorization to use his signature on reports was implicit, that the practice was discussed at the inception of the PAC, and she discussed it with Byer at some point in the past.

<sup>22</sup> See e.g., Factual and Legal Analysis for John Buchalski at 3, MUR 5646 (Buchalski) (finding reason to believe that the treasurer recklessly failed to perform his duties in case where treasurer "in title only" never handled committee funds and signed blank or incomplete reports prepared by others).